IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6852 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH
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1.   Whether Reporters of Local Papers may be allowed
        to see the judgements?

2.   To be referred to the Reporter or not?

3.   Whether Their Lordships wish to see the fair copy
        of the judgement?

4.   Whether this case involves a substantial question
        of law as to the interpretation of the Constitution
        of India, 1950 of any Order made thereunder?

5.   Whether it is to be circulated to the Civil Judge?

        OM CONSTRUCTION CO.,
Versus
        AHMEDABAD MUNICIPAL   CORPORATION

        Appearance:
            MR MANISH R BHATT for Petitioner
            MR PRASHANT G DESAI for Respondent No. 1
            SERVED BY DS for Respondent No. 2

        CORAM : MR.JUSTICE M.S.PARIKH
        Date of decision: 28/10/96

ORAL JUDGEMENT

 Rule. Service of Rule waived by Mr. P. G. Desai,
       learned Advocate appearing for the respondents.

        It is the case of the petitioner that   he
       satisfactorily completed different works undertaken by
       him as particularised in the petition. One of the works

completed by him was the work at Dani Limda. However, inspite of detailed facts set out in the petition the respondent No.2 issued Circular dated 30.11.1995 black-listing the petitioner on the ground that the petitioner did not complete the aforesaid work satisfactorily and that he misbehaved with the Assistant Engineer Mr.Modi. Without entering into the merits of the allegations made against the petitioner this petition can be disposed of. It is not in dispute that before passing the impugned resolution black-listing the petitioner and before issuing the impugned order pursuant to the impugned resolution dated 30.11.1995 the petitioner was not heard. Reference in this connection has been made to the Circular (Annexure : U) which in turn refers to the decision of the Honourable Supreme Court in the case of M/s. Erusian Equipment and Chemicals Ltd. V/s. State of West Bengal, reported in AIR 1975 SC 266 , where the following observations of the Apex Court have been head noted :

> "Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

> The State which has the right to trade has also the duty to observe equality. The Government can not choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality. The State can enter into contract with any person it chooses. No person has a fundamental right to insist that the Government must enter into a contract with him. A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling. Where the blacklisting order involves civil consequences it casts a slur. It creates a

barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion". Hence a person must be given an opportunity of hearing before his name is put on the black list."

In the result the impugned decision brought under challenge in this petition is required to be quashed and set aside. The impugned decision witnessed by the impugned circular (Annexure : S) dated 30.11.1995 blacklisting the petitioner is hereby quashed and set aside. The respondent Corporation through its appropriate Authority will decide the question of blacklisting the petitioner after giving proper opportunity to the petitioner of being heard, if they so desire.

Rule made absolute accordingly.

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